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9
10 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
11

12 NEW YORK MARINE AND
13 GENERAL INSURANCE COMPANY,
a New York corporation,

14 Plaintiff,

15 v.

16 AMBER HEARD, an individual,

17 Defendant.
18

Case No. 2:22-cv-04685-GW (PDx)

Consolidated for Pre-Trial Purposes
with 2:21-cv-5832-GW (PDx)

**TRAVELERS COMMERCIAL
INSURANCE COMPANY'S
RESPONSE TO PLAINTIFF NEW
YORK MARINE'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

Date: July 27, 2023

Time: 8:30 a.m.

Crtrm: 9D

Judge: Hon. George H. Wu

Trial Date: December 12, 2023

21 AMBER HEARD, an individual,

22 Counter-Claimant,

23 v.
24

25 NEW YORK MARINE AND
GENERAL INSURANCE COMPANY,
a New York Corporation,

26 Counter-Defendant.
27
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1 **I. INTRODUCTION**

2 Travelers Commercial Insurance Company (“Travelers”) submits this brief in
 3 response to New York Marine’s Cross-Motion for Judgment on the Pleadings [Dkt.
 4 59-1] to address issues that could impact resolution of the consolidated action
 5 pending as *Travelers Commercial Insurance Company v. New York Marine*, Case
 6 No. 2:21-cv-05832-GW. New York Marine (“NY Marine”) argues that it had no
 7 duty to defend Heard in the underlying defamation action. NY Marine is wrong.

8
 9 **II. POTENTIALLY APPLICABLE COVERAGES**

10 At issue is a Commercial General Liability policy issued by NY Marine to
 11 Under the Black Sky, Inc., effective from July 18, 2018 to July 18, 2019, as Policy
 12 No. GL201800012500 (the “Policy”). [Dkt. 5-1 at 222]. The Declarations in the
 13 Policy list Under the Black Sky, Inc. as the Named Insured. The Named Insured
 14 Extension Schedule adds Amber Heard, an Individual, as a named insured. [*Id.* at
 15 207].

16 NY Marine’s Policy contains three coverage parts: Coverage A (Bodily
 17 Injury and Property Damage Liability), Coverage B (Personal and Advertising
 18 Injury Liability), and Coverage L (Personal Liability). Coverage L was specially
 19 added via a Comprehensive Personal Liability Coverage endorsement. [*Id.* at 255].

20 Coverage A is inapplicable, as it provides coverage for “bodily injury” or
 21 “property damage” caused by an “occurrence,” defined as an “accident.” [*Id.* at
 22 224, 237] The underlying lawsuit filed against Defendant Heard did not seek any
 23 damages because of “bodily injury” or “property damage.” Coverages B and L
 24 (discussed below) are both potentially applicable to Heard’s claims for defense and
 25 indemnity. NY Marine only addresses Coverage L in its brief (and declaratory
 26 judgment action).

1 **III. THE SUIT AGAINST HEARD TRIGGERED NY MARINE’S DUTY**
 2 **TO DEFEND UNDER COVERAGE B AND COVERAGE L**

3 Coverage B obligates NY Marine to defend and indemnify suits for damages
 4 because of “personal and advertising injury,” defined to include injury arising out of
 5 “[o]ral or written publication, in any manner, of material that slanders or libels a
 6 person or organization or disparages a person’s or organization’s goods, products or
 7 services.” [*Id.* at 229, 237] Coverage B does not require an “occurrence” or
 8 accident. To the contrary, Coverage B specifically provides coverage for slander,
 9 libel, and disparagement of another. [*Id.*]

10 In the past, NY Marine has suggested that Coverage B did not apply to
 11 Heard’s claim because the alleged defamation was not connected to Under the Black
 12 Sky’s or Heard’s business. The underlying complaint alleges the precise opposite:
 13 “Ms. Heard revived her false allegations against Mr. Depp in the op-ed to generate
 14 positive publicity for herself and to promote her new movie *Aquaman*, which
 15 premiered across the United States and in Virginia only three days after the op-ed
 16 was first published.” [Doc. 5-2 at p. 7.]

17 Coverage L obligates NY Marine to defend and indemnify suits for damages
 18 because of “personal injury” caused by an “occurrence.” [Doc. 5-1 at 255]
 19 “Personal injury” is defined to include an injury other than bodily injury arising out
 20 of “oral or written publication of material that slanders or libels a person or
 21 organization including other forms of defamation.” [*Id.* at 258] Although Coverage
 22 L contains an exclusion for personal injury that is “expected or intended by the
 23 Insured,” that exclusion does not apply if the personal injury was “arising out of oral
 24 or written publication or other forms of defamation that occurred prior to the
 25 inception date of this policy.” [*Id.* at 255]

26 **IV. CONCLUSION**

27 New York Marine had a duty to defend Heard in the underlying defamation
 28 action under its Coverage B (personal and advertising injury coverage) and

1 Coverage L (personal liability coverage). The Court should not adopt the incorrect
2 arguments in NY Marine's Cross-Motion for Judgment on the Pleadings.

3
4 Dated: July 6, 2023

5 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

6
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